

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MELVIN A. ELKINS, JR. and
WANDA L. ELKINS,

Plaintiffs,

v.

No. 2:19-cv-00760-WJ-GBW

WATERFALL COMMUNITY WATER
USERS ASSOCIATION, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiffs' response to the Court's Order to Show Cause. *See* Doc. 12, filed April 7, 2020.

Plaintiffs filed their original Complaint on August 20, 2019. *See* Doc. 2. On December 16, 2019, the Court granted Plaintiffs' motion for leave to file an amended complaint. *See* Doc. 11. Plaintiffs have not served the original Complaint nor filed an amended complaint. The Court ordered Plaintiffs to show cause why the Court should not dismiss this case for failure to timely serve the original Complaint and for failure to file an amended complaint, and notified Plaintiffs that failure to timely show cause may result in dismissal of this case without prejudice. Plaintiffs did not respond to the Order to Show Cause by the April 21, 2020, deadline.

One day after the deadline, Plaintiffs filed a Notice of Removal and Certificate of Service which states:

I hereby certify that on the 13th day of September 2019, I caused a true and correct copy of the Notice of Removal of New Mexico District 12, Case No. CV-2007-343, to the United States District Court (Las Cruces Division). A hand delivered Notice of Transfer was filed on September 5th 2019 with Katina Watson, Clerk of the 12th Judicial Court. We have served the below named Parties [sic] Counsel therefor by e-mail to on September 13, 2019 and by Priority Mail, Return Receipt Requested on September 20, 2019.

Doc. 13 (“Notice”). The Notice indicates it was served on counsel for Defendant Waterfall Community Water Users Association and counsel for Defendant New Mexico State Engineer.

The Court’s review of Clerk’s Office records did not find a state-court case removed by Plaintiffs to this Court on September 13, 2019. The removed case would have been opened as a separate case and assigned its own case number. The Court’s review of state-court records shows that Plaintiffs in this case were plaintiffs in the state-court case. A plaintiff may not remove a case from state court. *See* 28 U.S.C. § 1441(a) (“any civil action brought in a State court ... may be removed by the *defendant* ...”) (*emphasis added*).

Plaintiffs’ Notice does not show cause why the Court should not dismiss this case for failure to timely file the Complaint or for failing to file an amended complaint. Even if Plaintiffs removed a state-court case on September 13, 2019, they have not shown good cause for not timely serving the Complaint in this case, which was filed on August 20, 2019, nearly a month earlier than the purported removal. Nor have Plaintiffs shown good cause for not filing an amended complaint within the four months after the Court granted their motion for leave to amend.

IT IS ORDERED that this case is **DISMISSED without prejudice**.



CHIEF UNITED STATES DISTRICT JUDGE